

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
Editorial Staff

MINNESOTA STATE LAW LIBRARY

MASON PUBLISHING CO.
SAINT PAUL 1, MINNESOTA

1944

~~PROPERTY OF
MAHONIN LAW LIBRARY
ASSOCIATION~~

9932. Imprisonment on two or more convictions.

When a person who is at liberty on a suspended sentence imposed for commission of a first felony commits a second felony, the sentence imposed for second felony cannot be served concurrently with the first sentence, and a person is under sentence for a felony after sentence has been imposed whether he is actually confined in prison or not, so long as sentence has not been fully executed or permanently suspended or a pardon has not been granted. Op. Atty. Gen. (341k-1), July 7, 1942.

Where a defendant has committed two offenses and has been tried on one of them, convicted and is sentenced thereon; then is put on trial for the other offense and is convicted and is sentenced thereon, the two sentences may be served concurrently. Op. Atty. Gen. (341k-1), July 7, 1942.

Where a man has committed two felonies in two counties respectively, both being committed before trial on either crime and before sentence was pronounced for either, and is tried in respective counties and convicted, sentences may be served concurrently though imposed in different district courts, though court has authority to order sentences served consecutively. Op. Atty. Gen. (341k-1), July 7, 1942.

Where one sentenced to reformatory was placed on probation and committed another felony and was sentenced to the reformatory, but judge at the time ordered that both sentences be served concurrently and revoked stay of sentence in first case, portion of sentence providing that it be served concurrently was void. Op. Atty. Gen. (341k-1), Sept. 31, 1942.

Sentences must be served consecutively when two pleas of guilty are received before sentence is pronounced on either crime. Op. Atty. Gen. (341k-1), Apr. 2, 1943.

Where prisoner was sentenced to serve term in St. Cloud Reformatory and was paroled and later was convicted of another crime and was sentenced to state prison, he should serve the reformatory term first and may be transferred to the reformatory for that purpose. Op. Atty. Gen. (341k), Apr. 19, 1943.

9936. Suspension of sentence.

Trial court has discretion to suspend sentence, and where there is no abuse of discretion, appellate court will not interfere with a sentence imposed in exercise of such discretion. State v. Soitau, 212M20, 2NW(2d)155. See Dun. Dig. 2487.

Upon affirmation of conviction for perjury, defendant was informed that, if so advised, he might renew his application for leniency in matter of suspended sentence. Id. Power of justice of the peace to suspend a sentence must be exercised at time of imposition. There is no power to suspend on conviction for a third offense. Op. Atty. Gen. (266B-21), Nov. 6, 1941.

Municipal court of Chisholm may not refund a fine imposed in a criminal case after it has been paid to the clerk of the court. Op. Atty. Gen. (199B-7), Mar. 19, 1942.

9940. Restoration to civil rights.

A commutation of sentence to a term of 4½ months, with reservation of right to revoke commutation for misconduct, does not restore civil rights. Op. Atty. Gen. (68h), Sept. 13, 1940.

9941. Certification by proper officers.

When board of pardon grants releases through an unconditional commutation of sentence and so certifies, governor on receipt of certification may in his discretion restore such persons to civil rights, but then a prisoner is released through a commutation granted on condition the pardon board's jurisdiction is not completely terminated and governor has no power to restore civil rights before the final disposition of the sentence. Op. Atty. Gen. (68h), May 18, 1943.

9944. Restoration to civil rights, etc.

Section provides a method for restoration of civil rights in addition to that provided through governor. Op. Atty. Gen. (68h), May 18, 1943.

9945. Persons hereafter convicted.

Section provides a method for restoration of civil rights in addition to that provided through governor. Op. Atty. Gen. (68h), May 18, 1943.

CHAPTER 93A

Prevention and Control of Crime—Bureau of Criminal Apprehension

9950-6. Superintendent—Appointment, terms of office, removal, etc.

Apparently stolen property coming into hands of bureau of criminal apprehension and unclaimed should be turned over to sheriff of county where taken, to be disposed of as unidentified stolen property. Op. Atty. Gen. (985), Jan. 15, 1940.

It is improper for superintendent to give courtesy badges to personal friends. Op. Atty. Gen., (985h), Feb. 2, 1940.

9950-7. Employees of bureau; etc.

Judge of a municipal court, who has no clerk, is not required to report to superintendent of bureau of criminal apprehension, at least in all municipal courts organized since March 1, 1906. Op. Atty. Gen. (985F), Mar. 10, 1942.

9950-26. Abandoned or stolen property—Return to owner or sheriff.—That the Bureau of Criminal Apprehension shall make every effort for a period of one year after the seizure or recovery of abandoned or stolen property to return such property to the lawful owner or to the sheriff of the county from which it was stolen. (Act Apr. 23, 1941, c. 389, §1.) [626.365]

9950-27. Same—Public sale—Notice.—Any such property held by such Bureau for more than one year, in case the owner cannot be found or if it cannot be determined from what county the property was stolen, shall be sold at public auction by the superintendent of the Bureau or his agent, after two weeks' published notice thereof in a legal newspaper in Ramsey County, stating the time and place of such sale and a list of the property to be sold. (Act Apr. 23, 1941, c. 389, §2.) [626.365]

In view of federal law and regulations automobile tires cannot be sold at public auction, but may be disposed of under statute authorizing transfer of unused property from one state agency to another by commissioner of administration. Op. Atty. Gen. (985), Mar. 24, 1942.

9950-28. Same—Disposition of proceeds.—The proceeds of such sale shall be applied in payment of the necessary expenses of the sale and all necessary costs, storage, or charges incurred in relation to such property. The balance of the proceeds of such sales shall be paid into the general revenue fund. (Act Apr. 23, 1941, c. 389, §3.) [626.365]

CHAPTER 94

Rights of Accused

9952. Presumption of innocence—Conviction of lowest degree, when.**1. Burden of proof on state.**

Violations of a city ordinance need not be proved beyond a reasonable doubt. State v. Jamieson, 211M262, 300NW809. See Dun. Dig. 2449.

Not all the indicia of crime need be proved in all cases beyond a reasonable doubt, but conviction cannot be sustained without compliance with the reasonable doubt rule in respect to the corpus delicti and the criminal agency of the accused. State v. Kaster, 211M119, 300NW 897. See Dun. Dig. 2451, 2453.

Where evidence of guilt is all circumstantial, proof beyond a reasonable doubt is not satisfied if the inference of innocence is as reasonable as that of guilt. *Id.* See *Dun. Dig.* 2451.

Same degree of proof is not required in prosecutions under a city ordinance as in prosecutions for violation of a statute under an indictment or information. *State v. Glenn*, 213M177, 6NW(2d)241. See *Dun. Dig.* 6806.

Proof beyond a reasonable doubt is not necessary in cases involving violations of ordinances. *State v. Siporen*, 215M438, 10NW(2d)353. See *Dun. Dig.* 6806.

9966. Acquittal—When a bar.
Double jeopardy. 24MinnLawRev522.

CHAPTER 95

Crimes Against the Sovereignty of the State

9970. Wilful neglect of official duty.

Wilful neglect of duty was not intended to apply to neglect to perform a duty of such character that as a matter of public interest a public officer must, in faithful discharge of his duties, scrutinize prior proceedings to determine their legality in order to conclude whether his duty has in fact arisen. *State v. Brattrud*, 210M214, 297NW713, 134ALR1248. See *Dun. Dig.* 8028.

In prosecution of police officer for wilful neglect of official duty with respect to enforcement of law against a house of ill fame, state must prove place concerned as one of ill fame, and character of place could be proved by showing how and in what manner it was conducted and what occupants did and said. *State v. Palmerstein*, 210M476, 299NW669. See *Dun. Dig.* 8028.

Evidence held to sustain conviction of head of "morals squad" of wilful neglect of official duty in connection with disorderly houses. *Id.*

In prosecution of police officer for wilful neglect of official duty, it was not prejudicial error to refuse request to read statutes pertaining to an officer's power to arrest because those statutes covered situations other than that presented by evidence, and court in summarizing indictment made elements of crime clear to jury, though court should have instructed jury as to officer's power and authority in response to such request. *State v. Grunewald*, 211M74, 300NW206. See *Dun. Dig.* 8028.

Defendant's requested instructions that he as a police officer had no right to arrest proprietors of a house of ill fame without being in possession of competent evidence of commission of that felony were properly refused. *Id.*

Evidence held sufficient to sustain conviction of police officer for wilful neglect of official duty in failing to arrest keepers of a house of ill fame. *Id.*

Neglect of official duty may consist of careless or intentional failure to exercise reasonable diligence in its performance. Removal of Mesenbrink, 211M114, 300NW398. See *Dun. Dig.* 8028.

Removal of a village clerk from office for incompetency must be by conviction under Mason's Minnesota Statutes, 1927, §6953(5). *Op. Atty. Gen.*, (475H-2), July 2, 1941.

9978½.

WAR

2. Price control.

Federal District Court had no jurisdiction to pass on

the reasonableness or validity of price regulations issued by Office of Price Administration. *Henderson v. C. Thomas Stores*, (DC-Minn), 48FSupp295. See *Dun. Dig.* 3744.

The ceiling prices designated in the Federal Emergency Price Control Act as applied to retail stores which were members of a large chain meant that each store must base its ceiling price on the amount for which goods were sold by it in March 1942, and not upon the prices charged in another store of the chain during that month. *Id.* See *Dun. Dig.* 10136ccc to 10136f.

Where goods were sold at a discount for quantity purchases during March 1942, the seller could not change the price differential on such purchases unless the charge resulted in a lower price. *Id.*

Retail chain stores could not raise prices above their selling prices for March 1942, on account of the fact that wholesale purchaser was forced to pay more for the goods, without obtaining permission upon application to the Office of Price Administration. *Id.*

Managers of a chain of retail stores could be enjoined from selling goods at prices in excess of ceiling and from selling without adequately posting ceiling price lists, even though such conduct was merely the result of carelessness and misunderstanding of price regulations. *Id.*

The Federal district court does not have jurisdiction to determine the validity of price regulations issued by the administrator under the Emergency Price Control Act. *U. S. v. C. Thomas Stores*, (DC-Minn), 49FSupp111. See *Dun. Dig.* 3744.

The Emergency Price Control Act is a valid exercise of the war powers of Congress. *Id.* See *Dun. Dig.* 10136ccc to 10136f.

3. Requisition of property.

The right of the Federal government to requisition personal property under its war powers is superior to the rights of creditors of a corporation under reorganization or the trustee in whose possession the property is. *Inland Waterways*, (DC-Minn), 49FSupp675. See *Dun. Dig.* 10136ccc to 10136f.

Upon requisition of personal property by the federal government pursuant to 50:App Mason's USCA 721, the government is not bound to tender compensation to the property owner before or at the time of taking. *Id.*

CHAPTER 96

Crimes Against Public Justice

BRIBERY AND CORRUPTION

9995. Interfering with public officers.

Where licensed fur dealer was arrested upon three complaints, two arising out of violation of fur law and third on charge of resisting a game warden, and was fined under each complaint, whether state was entitled to 50% of fine under last complaint depends upon which statute prosecution was based. *Op. Atty. Gen.* (199B-4), Mar. 20, 1942.

RESCUES AND ESCAPES

10007. Escaped prisoners.

Where man is bound over to district court in a county without a jail and is lodged in jail in another county and escapes, escape constitutes another felony and county where escape occurs is liable for cost of apprehending and returning prisoner, but sheriffs of both counties hold outstanding warrants and may enter into an agreement to share expense. *Op. Atty. Gen.*, (341a), April 24, 1940.

PUBLIC RECORDS

10013. Injury to public records.—Every person who shall wilfully and unlawfully remove, mutilate, de-

stroy, conceal, alter, deface, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office or with any public officer by authority of law or any public officer or employee who permits any other person to do so shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than \$500.00, or by both. (As amended Act Apr. 28, 1941, c. 553, §7.)

PERJURY AND OTHER CRIMES

10016. Perjury defined.

1. What constitutes.

Perjury means not only testifying under oath to what is untrue, but that the one so testifying knew and appreciated at moment of giving testimony that it was false and untrue. *Priebe*, 207M97, 290NW552. See *Dun. Dig.* 7474.

What happens to perjurers. 24MinnLawRev727.

5. Evidence.

Where evidence is conflicting, question of guilt in perjury, as well as in other cases, is one of fact for jury.